

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
DELAWARE-MARYLAND DISTRICT  
31 HOPKINS PLAZA  
BALTIMORE, MD 21201

DEPARTMENT OF THE TREASURY

PERSON TO CONTACT:

CONTACT TELEPHONE NUMBER:

REPLY TO: EF:EO:T

DATE: OCT 2 1996

CERTIFIED MAIL:

Dear Applicant:

We have completed our review of the application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code which you recently filed and have determined that you do not qualify for exemption under this section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that you were formed under By-laws adopted by your General Assembly on [REDACTED]. These By-laws state at paragraph I, Aims of the Association, that [REDACTED] is a non profit association. Its aims are as follows:

1. To promote solidarity between the [REDACTED] in the United States of America;
2. To provide its members with moral assistance and if possible, material and financial support;
3. To serve as a framework for the expression of [REDACTED] culture.

Membership in your organization consists of two categories, the [REDACTED] members and the associate members. A [REDACTED] member is any person of either sex belonging to the [REDACTED] ethnic group. An associate member is any person of either sex related by marriage to a member of the [REDACTED] group.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	EP 7304		EP:T				
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	10.18.96	10/24/96					

Form 1937-A (Rev. 6-80) Correspondence Approval and Clearance

Department of the Treasury/Internal Revenue Service  
\*U.S. GPO 1989-244-484

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The activities of your organization, as described in your application, include the following:

1. Organize social and cultural events for [redacted] Nationals living in the Washington, D.C. area to maintain and develop their cultural heritage, e.g. dance, theatrical groups;
2. Provide moral, and if possible, material and financial support ( e.g. information on schools, housing, child care, local and federal laws and regulations to members;
3. Organize [redacted] language training and exchange of books;
4. Maintain liaison and cooperation efforts with similar associations in the U.S. and other countries;
5. Organize public events and performances for the promotion of [redacted] culture in the U.S.

Income for your organization has been shown as follows:

Annual Membership Fees	[redacted]	[redacted]
at \$ [redacted] per member	\$ [redacted]	\$ [redacted]
Emergency Assistance		
Fund at \$ [redacted] per member	\$ [redacted]	\$ [redacted]
Summer Picnic at \$ [redacted]		
per adult member	\$ [redacted]	\$ [redacted]
End of Year Party at		
\$ [redacted] per adult	\$ [redacted]	\$ [redacted]
Sale of T-shirts	\$ [redacted]	\$ [redacted]
Miscellaneous	\$ [redacted]	\$ [redacted]
Total	\$ [redacted]	\$ [redacted]

Expenses for this same period have been estimated as follows:

Newsletter	\$ [redacted]	\$ [redacted]
Operating Expenses	\$ [redacted]	\$ [redacted]
Summer Picnic Expense	\$ [redacted]	\$ [redacted]
End of Year Party Expense		
Cultural/Educational		
Fin Asst Needy Students		
Emergency Assistance to		
Members		
Fin Assistance non-members		

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Collaboration with other  
Associations  
Miscellaneous

\$

\$

The financial statements submitted with your application show net surpluses of \$ for and \$ for .

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax for organizations organized and operated exclusively for charitable, religious, educational and other stated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3) an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under this section.

Section 501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(iv) of the Income Tax Regulations specifies that an organization is not organized exclusively for one or more exempt purposes, if by the terms of its articles, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will not be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes or to the Federal government, or to a state or local government for a public purpose.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if Articles of Incorporation limit the purposes of such organization to exempt purposes.

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Section 501(c)(3)-1(d)(1) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, an organization must establish that it is not organized and operated exclusively for the benefit of private interests such as designated individuals the creator or his family, shareholders of the organization or persons controlled directly or indirectly by such private interests.

Organizations that are organized and operated on a nonprofit basis do not always qualify for exemption under section 501(c)(3). The fact that an organization does not make a profit is not the controlling factor. See Baltimore Health and Welfare Fund v. Commissioner, 82 T.C. 854 (1978); and B.S.W. Group v. Commissioner, 70 T.C. 352, (1978)

In Better Business Bureau v. United States, 326, U.S. 279-283, the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show that (1) it is organized and operated exclusively for religious, charitable or other stated purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2nd, 632 (7th Cir. 1963).

In Calvin K. and Mary I. of Oakknoll, Petitioners, v. Commissioner of Internal Revenue Respondent, 69 USTC, 770, the requirements of the "organizational test" of section 501(c)(3) are discussed. The court states that "an organization is not organized exclusively for one or more exempt purposes unless upon dissolution, its assets are dedicated to an exempt purpose." Without an irrevocable commitment to distribute their assets to qualified 501(c)(3) entities in its creating document, an organization fails the organizational test of section 501(c)(3).

In Revenue Ruling 57-449, 1957-2, C.B. 622, a trust set up to pay a certain sum to all the individuals enrolled in a specific school was held to be a private rather than a charitable trust. The beneficiaries were a group of identifiable individuals.

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In The Media Sports League, (TMSL), 52 TCM, 1986-568, an organization was formed to conduct an amateur sports league. In reviewing the activities of this organization, the Tax Court stated that the sports activities of this organization which were conducted exclusively for adults furthered the social and recreational interests of its members rather than exclusively educational and charitable purposes. The court stated that "We have repeatedly held that organizations whose activities are directed substantially toward social and recreational purposes are not eligible for 501(c)(3) status. North American Sequential Sweepstakes v. Commissioner, 77 T.C. 1087 (1981) and Syrang Aero Club Inc. v. Commissioner, 73 T.C. 717.

With regard to the organizational test required to be exempt under section 501(c)(3), our review of the By-laws submitted with your application indicates that this document does not meet the requirements to be exempt under section 501(c)(3). For purposes of obtaining exempt status under this section, an organization must submit one of the following documents:

1. Articles of Incorporation;
2. A Trust document;
3. Articles of Organization.

The By-laws submitted by your organization do not qualify as an organizational document because by-laws are considered a document that spell out the internal operating rules under which an organization is governed. In addition, an organizational document must limit the purposes of an organization to those described in section 501(c)(3) and provide for the distribution of assets in the event the organization dissolves. As the court stated in Calvin K of Oaknoll, "an organization is not organized exclusively for one or more exempt purposes unless upon dissolution, its assets are dedicated to an exempt purpose." Therefore, based upon the information submitted, we have determined that your organization does not meet the organizational test of section 501(c)(3).

With regard to the operational test required to be exempt under section 501(c)(3), our review of your activities and expenses shows that during [REDACTED], you expect to receive \$[REDACTED] from annual membership fees, assessments obtained from members for the Emergency Assistance Fund and funds collected from members for an annual summer picnic and end of year party.

The expenses for your organization indicate that \$[REDACTED] will be used for various purposes during [REDACTED]. Of this amount, the following expenses appear to be primary:

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Recreational

Summer picnic & year end party  
Financial Assistance, Needy Students  
Emergency Assistance, Members

\$ [REDACTED]  
\$ [REDACTED]

The remaining expenses shown for Newsletter, (\$ [REDACTED]), Operating Expenses (\$ [REDACTED]), Cultural Educational Activities, (\$ [REDACTED]), Financial Assistance to Non-members (\$ [REDACTED]), Collaboration with Other Associations ((\$ [REDACTED]) and Miscellaneous (\$ [REDACTED]) total \$ [REDACTED], leaving a \$ [REDACTED] surplus for [REDACTED].

From the nature of your activities and expenses paid in [REDACTED], it appears that a substantial amount of your funds are being used to benefit your members rather than for exclusively charitable purposes. Approximately 44% of your income has been budgeted to pay for a summer picnic and year end party. As the court stated in The Media Sports League, "We have repeatedly held that organization whose activities are directed substantially toward social and recreational purposes are not eligible for 501(c)(3) status."

Your scholarship activities also do not meet the requirements to be exempt because like the organization described in Local Union 712 I.B.E.W. Scholarship Trust Fund, the class of recipients served by this activity is too restrictive to meet the operated for public purposes requirement of section 501(c)(3).

In addition, because your financial assistance activities for the needy serve only individuals of [REDACTED] descent, your organization is not operated exclusively for one or more purposes described in section 501(c)(3) and serves the private interests of your members rather than the broad public interests of the entire community. By operating in this manner, the net earnings of your organization also inure to the benefit of your members and officers which also destroys exemption under section 501(c)(3).

Based on the information submitted, we have determined that you do not meet either the organizational or operational tests required to be exempt under section 501(c)(3). Therefore, we have concluded that you do not qualify for exemption under this section. In accordance with this determination, you are required to file federal income tax returns on Form 1120.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials.

[REDACTED]  
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If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal, as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position.

If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue service as a failure to exhaust administrative remedies.

Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service.

Appeals which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]  
District Director

Enclosure: Publication 892

cc: State Attorney General ([REDACTED])